



House of Representatives

General Assembly

File No. 359

January Session, 2009

Substitute House Bill No. 6312

House of Representatives, March 31, 2009

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE SALE OF ADULTERATED MILK AND MILK PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22-127 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 The terms defined in this section shall, as used in this chapter, have
4 the meanings set forth in this section unless otherwise clearly indicated
5 in the context.

6 (1) "Adulterated" means any milk, milk product, retail raw milk or
7 cheese: (A) Which bears or contains any poisonous or deleterious
8 substance which may render it injurious to health, provided if the
9 substance is not an added substance, such milk, milk product, retail
10 raw milk or cheese shall not be considered adulterated if the quantity
11 of such substance in such milk, milk product, retail raw milk or cheese
12 would not ordinarily render it injurious to health, (B) which bears or
13 contains any added poisonous or added deleterious substance which is

14 unsafe, (C) which consists in whole or in part of any diseased,
15 contaminated, filthy, putrid or decomposed substance or is otherwise
16 unfit for food, (D) which has been produced, prepared, packed or held
17 under insanitary conditions whereby it may have become
18 contaminated with filth or may have been rendered diseased,
19 unwholesome or injurious to health, or (E) whose packaging or
20 container is composed in whole or in part of any poisonous or
21 deleterious substance which may render the contents injurious to
22 health.

23 [(1)] (2) "Bulk tank unit" means a dairy farm or group of dairy farms
24 from which raw milk is collected for pasteurization for which a single
25 entity sanitation compliance rating is issued.

26 [(2)] (3) "Commissioner" means the Commissioner of Agriculture.

27 [(3)] (4) "Cheese manufacturer" means any person, firm, corporation
28 or cooperative association engaged in the production, receiving or
29 handling of milk or milk products, which milk products, in whole or in
30 part, are intended to be manufactured into cheese for distribution or
31 sale in or outside this state.

32 [(4)] (5) "Dealer" means any person, firm, corporation or cooperative
33 association engaged in the receiving, handling, purchasing,
34 distribution or sale of fluid milk or milk products, which fluid milk or
35 milk products, in whole or in part, are intended for bottling,
36 manufacturing, processing, distribution or sale in this state.

37 [(5)] (6) "Filled milk" means any combination of nonmilk fat or oil
38 and milk, whether or not it is fresh, cultured, reconstituted or modified
39 by the addition of nonfat milk solids, with or without milkfat, so that
40 the product, including stabilizers, emulsifiers or flavoring, resembles
41 milk or any other fluid milk product, and contains less than six per
42 cent nonmilk fat or oil.

43 [(6)] (7) "Handler" means any person, firm, corporation or
44 cooperative association engaged in the receiving, handling,

45 distribution or sale of fluid milk or milk products, which fluid milk or
46 milk products, in whole or in part, are intended for bottling,
47 manufacturing, processing, distribution or sale in this state.

48 (8) "Misbranded" means the use of any label, written or printed
49 advertising or graphic upon or accompanying a product or container
50 of milk, milk products or cheese, including, but not limited to, signs,
51 electronic displays, electronic communication, placards or other means
52 of communication intended to provide information to consumers,
53 which is false or misleading or which violates any applicable
54 municipal, state or federal labeling requirement.

55 [(7)] (9) "Nonstandardized milk products" means milk-based
56 products modified so they do not meet the definition of optional
57 ingredients established in 21 CFR 131.110, contain milk and milk
58 products, are intended to replace or be a substitute for standardized
59 fluid milk products. Nonstandardized milk products may contain safe
60 and suitable ingredients not present in standardized milk products.

61 [(8)] (10) "Pasteurization" or "pasteurized" has the same meaning, as
62 defined in section 1 of the Pasteurized Milk Ordinance as promulgated
63 by the United States Food and Drug Administration.

64 [(9)] (11) "Producer" means any person, firm or corporation that
65 operates a dairy farm that provides, sells or offers milk to any dealer,
66 person, handler, company or cooperative for sale.

67 [(10)] (12) "Public eating places" means places where meals are
68 served to the general public, including, but not limited to, public or
69 private schools and colleges, hotels, restaurants, clubs, lunchrooms,
70 bars, fountains or any place of public entertainment.

71 [(11)] (13) "Raw milk" or "milk for pasteurization" means normal
72 lacteal secretion that is practically free of colostrum and that is
73 obtained by the complete milking of one or more healthy hooved
74 mammals.

75 [(12)] (14) "Raw milk cheese" means aged hard cheese that meets the

76 sanitary provisions of this chapter and that is produced from retail raw
77 milk.

78 [(13)] (15) "Retail raw milk" means normal lacteal secretion that is
79 practically free of colostrum, that is obtained by the complete milking
80 of one or more healthy goats, sheep or cows, that is intended for
81 human consumption in the unpasteurized state and that meets the
82 sanitary standards of this chapter.

83 [(14)] (16) "Retail raw milk producer" means any person, firm,
84 corporation or cooperative association engaged in the production,
85 handling, distribution or sale of retail raw milk.

86 [(15)] (17) "Retail raw milk cheese manufacturer" means any person,
87 firm, corporation or cooperative association engaged in the
88 production, handling, distribution or sale of cheese manufactured from
89 retail raw milk.

90 [(16)] (18) "Safe and suitable ingredients" are food ingredients
91 generally recognized as safe, as referenced in 21 CFR [184.1] 184 and 21
92 CFR 186.

93 [(17)] (19) "Standardized milk and milk products" or "milk or milk
94 products" means products for which a standard of identity has been
95 established pursuant to 21 CFR 131.110.

96 Sec. 2. Section 22-129 of the general statutes is repealed and the
97 following is substituted in lieu thereof (*Effective October 1, 2009*):

98 (a) The Commissioner of Agriculture or the commissioner's duly
99 authorized agent shall prohibit the sale or offering for sale or
100 distribution of any cheese, milk or other milk product which is
101 insanitary or detrimental to health, and which has not been produced,
102 processed, cared for or handled in the manner prescribed in this
103 chapter and in chapter 431 and by the regulations of the Milk
104 Regulation Board.

105 (b) The following are prohibited: (1) The sale, offering for sale or

106 offering for barter or exchange any milk, milk product or cheese that is
107 adulterated, (2) the adulteration of any milk, milk product or cheese,
108 (3) the sale, offering for sale, offering for barter or exchange,
109 manufacturing, distributing or processing any milk, milk product or
110 cheese from any facility not licensed pursuant to section 22-229, or (4)
111 the sale, offering for sale, distributing, offering for barter or exchange
112 any milk for pasteurization, retail raw milk or retail raw milk cheese
113 from any dairy farm not registered pursuant to section 22-172 or 22-
114 173a.

115 (c) The provisions of this section shall not apply to the production of
116 milk, milk products, raw milk or raw milk products and the
117 manufacture of cheese for personal consumption or for consumption
118 by immediate family members.

119 (d) Nothing in this section shall prevent the commissioner from
120 seeking any other remedy provided by law.

121 (e) Any person who violates any order issued by the commissioner
122 or the commissioner's duly authorized agent pursuant to this section
123 shall, for a first violation, have committed an infraction and, for a
124 second or subsequent violation committed within one year of a prior
125 violation, be guilty of a class A misdemeanor.

126 Sec. 3. Section 22-211a of the general statutes is repealed and the
127 following is substituted in lieu thereof (*Effective October 1, 2009*):

128 The Commissioner of Agriculture may adopt, and from time to time
129 revise and amend, regulations, in accordance with the provisions of
130 chapter 54, necessary and appropriate to effectuate the policy and
131 provisions of this part or any ruling or order issued hereunder. The
132 commissioner shall have power to exempt from any regulation issued
133 hereunder all dealers selling not more than three hundred quarts of
134 milk per month. [The commissioner may adopt regulations which
135 incorporate by reference the provisions of the federal Pasteurized Milk
136 Ordinance promulgated by the United States Food and Drug
137 Administration provided such regulations shall be consistent with any

138 regulations adopted under section 22-133, and further provided such
139 regulations may by reference specifically incorporate any future
140 amendment to said ordinance.]

141 Sec. 4. (NEW) (*Effective October 1, 2009*) All milk dealers processing,
142 handling, storing, distributing, transporting, selling or offering for sale,
143 barter or exchange any milk, milk product or cheese shall comply with
144 the sanitation, handling, storage and processing provisions of chapter
145 430 of the general statutes and any regulations adopted thereunder.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	22-127
Sec. 2	<i>October 1, 2009</i>	22-129
Sec. 3	<i>October 1, 2009</i>	22-211a
Sec. 4	<i>October 1, 2009</i>	New section

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Dept. (Probation); Correction, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes it a violation of state law to fail to operate a dairy: (1) in violation of an order by the commissioner of agriculture; and (2) without the necessary licenses. The bill makes any first violation an infraction, punishable by a fine of \$75 - \$136, and a subsequent violation within one year a class A misdemeanor, which is punishable by up to 1 years' imprisonment and/or a fine of up to \$2,000. To the extent that offenders are subject to incarceration or probation supervision in the community as a result of the bill, a potential cost to criminal justice agencies exists. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The Out Years

The annualized ongoing revenue identified above would remain constant into the future since fine amounts are set by statute; the annualized ongoing costs related to potential incarceration or probation supervision would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6312*****AN ACT CONCERNING THE SALE OF ADULTERATED MILK AND MILK PRODUCTS.*****SUMMARY:**

This bill explicitly prohibits selling, offering to sell, bartering, or exchanging adulterated milk, milk products, or cheese (i.e., dairy products), and other activities related to these products. A first violation is an infraction and a second violation within one year is a class A misdemeanor. It exempts from its prohibitions production of dairy products for personal consumption or consumption by immediate family members.

The bill eliminates the Department of Agriculture (DOAG) commissioner's option to adopt regulations that incorporate by reference the federal Pasteurized Milk Ordinance. It requires instead that all milk dealers processing, handling, storing, distributing, transporting, selling, offering for sale, bartering, or exchanging any dairy product comply with the sanitation, handling, storage, and processing requirements of relevant state milk and milk product laws and regulations.

It defines "adulterated" and "misbranded" dairy products and makes technical changes.

EFFECTIVE DATE: October 1, 2009

PROHIBITIONS AND VIOLATIONS

The bill explicitly prohibits adulterating dairy products and selling, offering to sell, bartering, or exchanging them. It also prohibits:

1. selling, offering for sale, bartering, exchanging, manufacturing,

distributing, or processing such products from an unlicensed facility or

2. selling, offering for sale, distributing, or offering for barter or exchange milk for pasteurization, retail raw milk, or retail raw milk cheese from an unregistered dairy farm. (By law, dairy product facilities must be licensed by and dairy farms must be registered with DOAG.)

Under the bill, violators commit (1) an infraction for the first violation and (2) a class A misdemeanor for the second or subsequent violation within a year of the first. (An infraction is not a crime but subjects the violator to a fee; a class A misdemeanor is punishable by up to one year in prison, a \$2,000 fine, or both.) The bill specifies that nothing in it prevents the DOAG commissioner from seeking any other remedy the law provides.

By law, the DOAG commissioner may tag or otherwise mark a dairy product that is suspected of being adulterated or misbranded. Violators are subject to an administrative civil penalty.

ADULTERATED AND MISBRANDED DAIRY PRODUCTS

The bill defines “adulterated” as any milk, milk product, retail raw milk, or cheese that:

1. bears or contains any poisonous or deleterious substance, which may render the dairy product injurious to health; provided, if the substance is not an added substance, the dairy product is not considered adulterated if the quantity of the substance would not ordinarily render it injurious to health;
2. bears or contains any added poisonous or deleterious substance that is unsafe;
3. consists in whole or part of any diseased, contaminated, filthy, putrid, or decomposed substance or is otherwise unfit for food;
4. has been produced, prepared, packed, or held under unsanitary

conditions whereby it may have become contaminated with filth or rendered diseased, unwholesome, or injurious to health; or

5. has packaging or a container which is composed in whole or part of any poisonous or deleterious substance, which may render the contents injurious to health.

The bill defines “misbranded” as the use of any label, written or printed advertising, or graphic upon or accompanying a product or container of milk, milk products, or cheese, including, but not limited to, signs, electronic displays, electronic communication, placards, or other means of communication intended to provide information to consumers, which is false or misleading or which violates any applicable municipal, state, or federal labeling requirement.

BACKGROUND

Infractions

Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus an additional fee based on the amount of the fine and a \$20 surcharge. An infraction is not a crime; thus, violators do not have criminal records and can pay the fine by mail without making a court appearance.

Connecticut Uniform Food, Drug and Cosmetic Act

The Connecticut Food, Drug, and Cosmetic Act is intended, in part, to safeguard the public health and promote the public welfare by protecting consumers from harm caused by merchandising deceit.

The Connecticut act bans, among other things, the sale in intrastate commerce of food that is adulterated or misbranded (CGS § 21a-93). Among several grounds, a food is adulterated if any valuable part of it has been substituted wholly or in part (CGS § 21a-101). Among several grounds, a food is misbranded if (1) its labeling is false or misleading in any particular; (2) it is offered for sale under the name of another food; (3) it is a food for which no standard of identity has been established and it (a) falls below the standard of purity, quality, or

strength which it purports or is represented to possess or (b) does not bear its common or the usual name of each ingredient, except that spices, flavorings, and colorings may be designated as such without being specifically named (CGS § 21a-102). The law deems federal Food, Drug and Cosmetic Act standards of identity to be state standards for enforcement purposes (CGS § 21a-100).

Enforcement Powers. The act authorizes the Department of Consumer Protection (DCP) commissioner or his agents to embargo food that they have probable cause to believe violates the standards of identity requirements. Once the commissioner has embargoed an item, he has 21 days to either begin summary proceedings to confiscate it or remove the embargo. Proceedings are held in Superior Court by complaint and verified by affidavit. The law stipulates the elements of a complaint.

Once a verified complaint has been filed, the court must issue a warrant to seize the described article and summon the person named in the complaint. The law requires the court to hold a hearing not less than five days or more than 15 days from the date of the warrant. The court must order the food confiscated if it appears that it was offered for sale in violation of the act. If the food is not injurious to health and could be brought into compliance with the act if it is repackaged or relabeled, the court may order it delivered to its owner upon payment of court costs and provision of a bond to DCP assuring that the product will be brought into compliance (CGS § 21a-96).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/13/2009)